S.B. CIVIL WRIT PETITION NO.598/2005

Vimlesh Harsh and others.
vs.
Gauri Shanker Mahadev Mandir Samiti and others.

Date : 28.1.2005

HON'BLE MR. PRAKASH TATIA, J.

Mr. Ranjeet Joshi, for the petitioners.

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Heard learned counsel for the petitioners.

The petitioners allege that they are residents of Mohalla Brahambag. They are neighbours of the property in dispute.

According to the petitioners, the respondents are raising some construction on an open piece of land which the petitioners were using as a play ground. The petitioners sought injunction against the construction which is being raised by the respondent no.2. According to the petitioners, the respondents have no right to raise construction.

The trial court granted temporary injunction vide order dated 15.10.2004. Against this order, the respondent no.3 preferred an appeal which was allowed by the appellate court vide order dated 15.1.2005 and the injunction application of the petitioners was dismissed.

According to learned counsel for the petitioners, the property in dispute is belonging to respondent no.1 – Gauri Shanker Mahadev Mandir Samiti. The

petitioners are neighbours/tenant and they have a right to enjoy the benefit of play ground. It is also submitted that the respondent no.1 is not managing its property properly and permitted others to raise the construction.

Since the petitioners are claiming themselves to be neighbours of the property and they have no right, title or interest over the property and they are admitting that the property is belonging to the respondent no.1 and they are nobody so far as the property in question is concerned.

The first appellate court very carefully looked into all aspects of the matter including the Commissioner's report and thereafter reversed the findings recorded by the trial court holding that there is no prima-facie case made out by the petitioners nor there is balance of convenience in their favour. Apparently, there is no illegality in any of the findings of the appellate court so as to interfere in the impugned order under Article 227 of the Constitution of India.

Accordingly, this writ petition having no merit is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya